



UNITED STATES PATENT AND TRADEMARK OFFICE

M.F.

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/176,634	10/22/1998	MORDECHAI TURI	JWB-98-9-P	2106

7590 03/14/2003

JAMES W BADIE
STOLL MISKIN PREVITO HOFFMAN & BADIE
EMPIRE STATE BUILDING
350 FIFTH AVE SUITE 6110
NEW YORK, NY 10118

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 03/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/176,634

Applicant(s)

TURI ET AL. *MF*

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-38 is/are pending in the application.
- 4a) Of the above claim(s) 29-35, 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims 28 – 35 and 37 – 38 drawn to an invention nonelected without traverse in Paper No. 19. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 36, the applicant claims that the elasticized barriers intersect to form a double barrier layer. Do the elasticized barrier layers intersect the topsheet, the longitudinal sides, each other, etc? Clarification is required.

Further, the applicant claims that the two arch-shaped elasticized barrier layers are attached between the middle and the distal end of one of the longitudinal sides to form a first retaining enclosure between the first barrier layer and the topsheet. However, the applicant has only defined longitudinal sides with respect to the absorbent layer positioned between the topsheet and the backsheet. Does the applicant intend for

Art Unit: 3761

the retaining enclosure to be positioned between the topsheet and the backsheet or between the barrier layer and the topsheet? The same holds true for the second elasticized barrier layer. Correction is required.

Even further, the applicant claims two-arched-shaped elasticized barrier layers, a first generally concave elasticized barrier layer and a second generally convex elasticized barrier layer. Does the applicant intend to claim 4 barrier layers or two arched-shaped elasticized barrier layers comprising a first and second elasticized barrier layer? Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Enloe (US 4,753,646).

Regarding claim 36, Enloe discloses an integral disposable elasticized absorbent article having a longitudinal axis and a lateral axis (figure 1) comprising a top sheet (18), a back sheet (17), a front waist and back waist portion, a crotch portion and a pair of spaced apart leg openings (figure 1), an absorbent layer having a longitudinal axis and a horizontal axis disposed between the topsheet and the backsheet, the absorbent layer being defined by opposed spaced apart longitudinal sides each having a proximal end

Art Unit: 3761

and a distal end, and opposed spaced apart proximal and distal sides (col. 2, lines 17 – 23 and figure 1), means for fastening the absorbent article around the waist portion of a wearer of the absorbent article (11), and two arched-shaped elasticized barriers; a first generally concave elasticized barrier layer having one end attached between the middle and distal end of one of the longitudinal sides and second end attached between the middle and distal end of the other one of said longitudinal sides thereby forming a first retaining enclosure between the first barrier layer and the topsheet (15a), and a second generally convex elasticized barrier layer having one end attached between the middle and proximal end of one of the longitudinal sides and the other end attached between the middle and distal end of the other one of the longitudinal sides thereby forming a second retaining enclosure between the second barrier layer and the topsheet, and wherein the first and second arched-shaped elasticized barrier layers intersect (i.e. the topsheet) to form a double barrier layer on the topsheet of the absorbent article as set forth in figure 1.

Response to Arguments

Applicant's arguments filed January 13, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the two-arched shaped elasticized barriers intersecting each other) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

Art Unit: 3761

limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 36 recites that the first and second arched-shaped elasticized barrier layers intersect. It is not clear whether the layers intersect each other, intersect the topsheet, intersect the backsheet, etc. Clarity and/or correction is required. The applicant has argued that the barrier layers intersect each other, but the language of claim 36 does not reflect this argument.

Additionally, the applicant states that claim 36, part (h) refers to two elasticized barriers. However, the examiner notes that there is no part (h) in claim 36. If the applicant intended to refer to part (d) of claim 36, the examiner notes that the applicant claims (1) two-arched shape elasticized barrier layers, (2) a first generally concave elasticized barrier layer and (3) a second generally convex elasticized barrier layer. So, the question remains: Does the applicant intend to claim 4 barrier layers or two arched-shaped elasticized barrier layers comprising a first and second elasticized barrier layer?

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3761

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
March 11, 2003


WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700